

**H.R. 2944**  
**AMENDMENT TO THE AMENDMENT IN THE**  
**NATURE OF A SUBSTITUTE**  
**OFFERED BY MR. MARKEY**

Page 7, line 21, insert “both the bundled and” after “including”.

Page 7, strike line 23 and all that follows down through line 7 on page 8, and make the necessary conforming changes.

Page 8, line 12, insert “both the bundled and” after “including”.

Page 8, strike lines 14 through 17.

Page 15, strike line 12 and all that follows down through page 16, line 5.

Page 19, after line 2, insert the following:

1       (e) LIMITATION ON JURISDICTION.—Section 201(a)  
2 of the Federal Power Act is amended by redesignating it  
3 as section 201(a)(1), and by adding at the end thereof  
4 the following:

5       “(2) Nothing in this section shall provide the Com-  
6 mission authority to require retail electric competition or  
7 provide the Commission jurisdiction over sales of electric

1 energy at retail, or otherwise affect the authority of a  
2 State or municipality to require retail electric competi-  
3 tion.”.

4 (f) EQUAL RATES REQUIRED.—Section 205(b) of the  
5 Federal Power Act is amended by adding at the end the  
6 following: “No public utility shall maintain any difference  
7 in rates or charges for a particular service between the  
8 transmission component of a bundled retail sale of electric  
9 energy and the transmission component of an unbundled  
10 sale of electric energy.”.

11 (g) EQUAL ACCESS AND SEPARATION OF FUNCTIONS  
12 RULEMAKING REQUIREMENT.—Section 205 of the Fed-  
13 eral Power Act is amended by adding at the end the fol-  
14 lowing:

15 “(g) RULEMAKING REQUIREMENT.—(1) Not later  
16 than 1 year from the date of enactment of the Electric  
17 Competition and Reliability Act, the Commission shall  
18 issue a final rule requiring each public utility to—

19 “(A) file with the Commission a tariff that es-  
20 tablishes the same rates, terms, and conditions for  
21 each type of service offered for the transmission  
22 component of bundled retail sales of electric energy  
23 and the transmission component of unbundled sales  
24 of electric energy; and

1           “(B) separate the transmission functions of  
2           public utilities from their generation and sales func-  
3           tions, which rules shall prohibit any corporate struc-  
4           ture, tariff provision, or rate that would permit or  
5           provide incentives for a public utility to discriminate  
6           in favor of, or give a preference to, its own or its  
7           affiliated generation or sales functions.

8           “(2) Not later than 18 months from the date of en-  
9           actment of the Electric Competition and Reliability Act,  
10          the rule required by this section shall require each public  
11          utility to take service for all of its customers under the  
12          provisions of the tariff required by this section, unless the  
13          utility is a transmitting utility that is exempt pursuant  
14          to section 206(e)(2)(B).”.

Page 19, beginning on line 14, strike all through  
page 24, line 11, and insert the following:

15          “(h) REGIONAL TRANSMISSION ORGANIZATION.—(1)  
16          Upon its own motion or upon application or complaint and  
17          after notice and an opportunity for a hearing, the Com-  
18          mission may order the establishment of entities for the  
19          purpose of independent ownership or independent oper-  
20          ation, control, and planning of interconnected trans-  
21          mission facilities; order a transmitting utility to relinquish  
22          ownership or control over operation of its transmission fa-  
23          cilities to an entity for the purpose of independent owner-

1 ship or independent operation, control, and planning of  
2 interconnected transmission facilities; subject generators  
3 to the control of such entity consistent with other laws  
4 to the extent necessary to permit reliable operation of the  
5 transmission facilities; or take any combination of these  
6 actions, if the Commission finds that—

7           “(A) this action is appropriate to promote com-  
8 petitive electricity markets and efficient, economical,  
9 and reliable operation of the interstate transmission  
10 grid;

11           “(B) the entity established for the purpose of  
12 independent ownership or independent operation,  
13 control, and planning of interconnected transmission  
14 facilities will manage the transmission facilities in a  
15 manner that assures that—

16           “(i) ownership of transmission facilities  
17 provides no advantage in competitive electricity  
18 markets;

19           “(ii) the transmission customers of the  
20 Tennessee Valley Authority, the Bonneville  
21 Power Administration, the Administrator of the  
22 Southwestern Power Administration, and the  
23 Administrator of the Western Area Power Ad-  
24 ministration will not pay an unreasonable share  
25 of the entity’s costs and will not experience un-

1 reasonable transmission rate increases resulting  
2 from the establishment of the entity; and

3 “(iii) as applicable, the respective statutory  
4 and treaty obligations and contractual obliga-  
5 tions existing on the date of enactment of this  
6 Act of the Board of Directors of the Tennessee  
7 Valley Authority, the Administrator of the Bon-  
8 neville Power Administration, the Administrator  
9 of the Southwestern Power Administration, the  
10 Administrator of the Western Area Power Ad-  
11 ministration, the Bureau of Reclamation, and  
12 the Corps of Engineers can be met;

13 “(C) any order requiring such divestiture or  
14 transfer of control shall be conditioned upon receipt  
15 by the electric utility of just and reasonable com-  
16 pensation for such divestiture or transfer of control  
17 of such generation or transmission facilities; and

18 “(D) adequate reliability of the affected trans-  
19 mission facilities will be maintained.

20 Nothing in this subsection limits States from addressing  
21 transmission facility maintenance, planning, siting, and  
22 other utility functions in a manner consistent with this  
23 Act or Commission action under this Act.

24 “(2) If not ordered under paragraph (1), the Ten-  
25 nessee Valley Authority, the Administrator of the Bonne-

1 ville Power Administration, the Administrator of the  
2 Southwestern Power Administration, or the Administrator  
3 of the Western Area Power Administration is authorized  
4 to participate in a regional transmission organization after  
5 conducting a public process in the relevant service area  
6 to receive comments. Notwithstanding any other law, par-  
7 ticipation may include delegation of operation and control  
8 of the Authority or Administration's transmission system  
9 to that entity, or other method of participation, under  
10 terms and conditions the Authority or Administrator de-  
11 termines necessary or appropriate, including being bound  
12 by operational and other orders of the entity and by the  
13 results of arbitration of disputes with the entity or with  
14 other participants.

15       “(3) If the Commission determines, after notice and  
16 opportunity for hearing, that the rates, charges, or classi-  
17 fications demanded, observed, charged, or collected by any  
18 entity established for the purpose of independent owner-  
19 ship or independent operation, control, and planning of  
20 interconnected transmission facilities for any transmission  
21 or sale, or that any rule, regulation, practice, or contract  
22 affecting such rate, charge, or classification is unjust, un-  
23 reasonable, unduly discriminatory, or preferential, or fur-  
24 thers or maintains the existence of market power, the  
25 Commission shall, pursuant to the standards and proce-

1 dures in section 206 of this Act, determine the rate,  
2 charge, classification, rule, regulation, practice, or con-  
3 tract that eliminates such market power and is just and  
4 reasonable, and shall fix the same by order.

5       “(4) Upon request by an entity established for the  
6 purpose of independent ownership or independent oper-  
7 ation, control, and planning of interconnected trans-  
8 mission facilities or any other person, the Commission  
9 shall issue a declaratory order determining whether such  
10 entity covers a sufficiently broad geographic region so as  
11 to ensure the development of efficient regional electricity  
12 markets that encourage regional efficiencies in both gen-  
13 eration dispatch and reliability of service.”.

Page 27, line 14, after “commerce” insert “or for  
the interconnection of new generating facilities”.

Page 46, line 19, strike the sentence beginning with  
“For purposes”.

Page 56, beginning with line 12, strike all through  
page 57, line 15.

Page 64, after line 23, insert the following and make  
the necessary conforming changes:

1           **“TITLE IV—COMPETITIVE**  
2           **GENERATION MARKETS**

3   **“SEC. 401. COMPETITIVE GENERATION MARKETS.**

4           “(a) IN GENERAL.—The Commission shall order di-  
5 vestiture or other transfer of control of the generation or  
6 transmission facilities of an electric utility that result in  
7 the market power described in this paragraph if the Com-  
8 mission finds, upon its own motion or upon application  
9 or complaint and after notice and an opportunity for a  
10 hearing, that—

11           “(1) there are markets in which an electric util-  
12 ity that owns or controls generation or transmission  
13 facilities has market power in wholesale or retail  
14 markets for electric energy;

15           “(2) such market power can result in prices for  
16 electric energy that exceed the prices that would be  
17 charged in a competitive market;

18           “(3) divestiture or transfer of control of some  
19 or all of an electric utility’s generation or trans-  
20 mission facilities is necessary to reduce or eliminate  
21 such market power;

22           “(4) such divestiture or transfer of control  
23 would not unreasonably impair the continued reli-  
24 ability of electric systems affected by such divesti-  
25 ture or transfer of control; and



1           “(5) there is no reasonable probability that the  
2           market power of the utility can be constrained by  
3           less intrusive means, including, but not limited to—

4                   “(A) directing the electric utility to relin-  
5                   quish control of its transmission system to an  
6                   entity established for the purpose of inde-  
7                   pendent operation and control of its trans-  
8                   mission system, pursuant to section 202(h); or

9                   “(B) instituting a proceeding under section  
10                  206 to deny the opportunity of the electric util-  
11                  ity and any of its affiliates that is a public util-  
12                  ity to engage in sales at market-based rates.

13           “(b) COMPENSATION.—Any order requiring such di-  
14           vestiture or transfer of control shall be conditioned upon  
15           receipt by the electric utility of just and reasonable com-  
16           pensation for such divestiture or transfer of control of  
17           such generation or transmission facilities.

18           “(c) AFFILIATES.—In the case of a transmitting util-  
19           ity that is an affiliate of an electric utility that owns or  
20           controls generation facilities, upon making the findings in  
21           subsection (a), the Commission may require the person  
22           that directly or indirectly owns the securities of the electric  
23           utility that owns or controls generation facilities to sell  
24           or otherwise dispose of such securities. However, any such  
25           divestiture or disposition shall be conditioned upon receipt

1 by such person of just and reasonable compensation for  
2 such divestiture or disposition of securities. In the case  
3 of an electric utility that owns or controls generation fa-  
4 cilities and is an affiliate of a transmitting utility, upon  
5 making the findings in subsection (a), the Commission  
6 may require the person that directly or indirectly owns the  
7 securities of the transmitting utility to sell or otherwise  
8 dispose of such securities. However, any such divestiture  
9 or disposition shall be conditioned upon receipt by such  
10 person of just and reasonable compensation for such dives-  
11 titure or disposition of securities.”.

Page 65, line 7, strike “electric utility or transmit-  
ting utility” and insert “person”.

Page 66, line 6, after “interest.” insert “Such find-  
ing shall include consideration of the effects on competi-  
tion in wholesale and retail markets.”.

Page 66, line 4, strike “hearing,” and insert “sub-  
mission of written comments, or following a hearing and  
issuance of an initial decision by an administrative law  
judge, if the Commission finds that a hearing is nec-  
essary because factual issues are in dispute,”.

Page 66, line 8, insert “or issuance by an adminis-  
trative law judge of an initial decision or an order certi-

fyng an uncontested settlement that would fully settle the case for all participants” after “period”.

Page 69, beginning in line 12, strike subtitle B and insert the following:

1 **Subtitle B—Provisions Respecting**  
2 **the Public Utility Holding Com-**  
3 **pany Act of 1935**

4 **SEC. 511. SHORT TITLE.**

5 This subtitle may be cited as the “Public Utility  
6 Holding Company Act of 1999”.

7 **SEC. 512. REFORM OF HOLDING COMPANY REGULATION**  
8 **UNDER PUHCA.**

9 Eighteen months after the enactment of this Act, the  
10 provisions of this title shall apply in lieu of the provisions  
11 of the Public Utility Holding Company Act of 1935, except  
12 that the Public Utility Holding Company Act of 1935 shall  
13 remain in effect with respect to any holding company sys-  
14 tem which includes 1 or more subsidiary companies that  
15 are public utility companies, if such public utility company  
16 or companies provide retail electric or gas service in 2 or  
17 more States in which the State regulatory authority has  
18 not provided notice of retail competition pursuant to sec-  
19 tion 152 of the Public Utility Regulatory Policies Act of  
20 1978 or which has not otherwise required distribution util-  
21 ities to provide open access service over the distribution

1 facilities of each distribution utility subject to its jurisdic-  
2 tion.

3 **SEC. 513. DEFINITIONS.**

4 For purposes of this title:

5 (1) AFFILIATE.—The term “affiliate” of a com-  
6 pany means any company 5 percent or more of the  
7 outstanding voting securities of which are owned,  
8 controlled, or held with power to vote, directly or in-  
9 directly, by such company.

10 (2) ASSOCIATE COMPANY.—The term “associate  
11 company” of a company means any company in the  
12 same holding company system with such company.

13 (3) COMMISSION.—The term “Commission”  
14 means the Federal Energy Regulatory Commission.

15 (4) COMPANY.—The term “company” means a  
16 corporation, partnership, association, joint stock  
17 company, business trust, or any organized group of  
18 persons, whether incorporated or not, or a receiver,  
19 trustee, or other liquidating agent of any of the fore-  
20 going.

21 (5) ELECTRIC UTILITY COMPANY.—The term  
22 “electric utility company” means any company that  
23 owns or operates facilities used for the generation,  
24 transmission, or distribution of electric energy for  
25 sale.

1           (6) EXEMPT WHOLESALE GENERATOR AND  
2 FOREIGN UTILITY COMPANY.—The terms “exempt  
3 wholesale generator” and “foreign utility company”  
4 have the same meanings as in sections 32 and 33,  
5 respectively, of the Public Utility Holding Company  
6 Act of 1935.

7           (7) GAS UTILITY COMPANY.—The term “gas  
8 utility company” means any company that owns or  
9 operates facilities used for distribution at retail  
10 (other than the distribution only in enclosed portable  
11 containers, or distribution to tenants or employees of  
12 the company operating such facilities for their own  
13 use and not for resale) of natural or manufactured  
14 gas for heat, light, or power.

15           (8) HOLDING COMPANY.—The term “holding  
16 company” means—

17               (A) any company that directly or indirectly  
18 owns, controls, or holds, with power to vote, 10  
19 percent or more of the outstanding voting secu-  
20 rities of a public utility company or of a holding  
21 company of any public utility company; and

22               (B) any person, determined by the Com-  
23 mission, after notice and opportunity for hear-  
24 ing, to exercise directly or indirectly (either  
25 alone or pursuant to an arrangement or under-

1 standing with 1 or more persons) such a con-  
2 trolling influence over the management or poli-  
3 cies of any public utility company or holding  
4 company as to make it necessary or appropriate  
5 for the rate protection of utility customers with  
6 respect to rates that such person be subject to  
7 the obligations, duties, and liabilities imposed  
8 by this Act upon holding companies.

9 (9) HOLDING COMPANY SYSTEM.—The term  
10 “holding company system” means a holding com-  
11 pany, together with its subsidiary companies.

12 (10) JURISDICTIONAL RATES.—The term “ju-  
13 risdictional rates” means rates established by the  
14 Commission for the transmission of electric energy,  
15 the sale of electric energy at wholesale in interstate  
16 commerce, the transportation of natural gas, and the  
17 sale in interstate commerce of natural gas for resale  
18 for ultimate public consumption for domestic, com-  
19 mercial, industrial, or any other use.

20 (11) NATURAL GAS COMPANY.—The term “nat-  
21 ural gas company” means a person engaged in the  
22 transportation of natural gas in interstate commerce  
23 or the sale of such gas in interstate commerce for  
24 resale.

1           (12) PERSON.—The term “person” means an  
2 individual or company.

3           (13) PUBLIC UTILITY.—The term “public util-  
4 ity” means any person who owns or operates facili-  
5 ties used for transmission of electric energy or sales  
6 of electric energy at wholesale in interstate com-  
7 merce.

8           (14) PUBLIC UTILITY COMPANY.—The term  
9 “public utility company” means an electric utility  
10 company or a gas utility company.

11          (15) STATE COMMISSION.—The term “State  
12 commission” means any commission, board, agency,  
13 or officer, by whatever name designated, of a State,  
14 municipality, or other political subdivision of a State  
15 that, under the laws of such State, has jurisdiction  
16 to regulate public utility companies.

17          (16) SUBSIDIARY COMPANY.—The term “sub-  
18 sidiary company” of a holding company means—

19               (A) any company, 10 percent or more of  
20 the outstanding voting securities of which are  
21 directly or indirectly owned, controlled, or held  
22 with power to vote, by such holding company;  
23 and

24               (B) any person, the management or poli-  
25 cies of which the Commission, after notice and

1 opportunity for hearing, determines to be sub-  
2 ject to a controlling influence, directly or indi-  
3 rectly, by such holding company (either alone or  
4 pursuant to an arrangement or understanding  
5 with 1 or more other persons) so as to make it  
6 necessary for the rate protection of utility cus-  
7 tomers with respect to rates, that such person  
8 be subject to the obligations, duties, and liabil-  
9 ity imposed by this Act upon subsidiary compa-  
10 nies of holding companies.

11 (17) VOTING SECURITY.—The term “voting se-  
12 curity” means any security presently entitling the  
13 owner or holder thereof to vote in the direction or  
14 management of the affairs of a company.

15 **SEC. 514. FEDERAL ACCESS TO BOOKS AND RECORDS.**

16 (a) IN GENERAL.—Each holding company and each  
17 associate company thereof shall maintain, and shall make  
18 available to the Commission, such books, accounts, memo-  
19 randa, and other records as are relevant to costs incurred  
20 by a public utility or natural gas company that is an asso-  
21 ciate company of such holding company and that provides  
22 goods or services to, obtains goods or services from, or  
23 engages in any transactions with such public utility com-  
24 pany or natural gas company, and necessary or appro-  
25 priate for the protection of utility customers with respect



1 to jurisdictional rates for the transmission of electric en-  
2 ergy in interstate commerce, the sale of electric energy at  
3 wholesale in interstate commerce, the transportation of  
4 natural gas in interstate commerce, and the sale in inter-  
5 state commerce of natural gas for resale for ultimate pub-  
6 lic consumption for domestic, commercial, industrial, or  
7 any other use.

8 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-  
9 ing company or of any subsidiary company of a holding  
10 company shall maintain, and make available to the Com-  
11 mission, such books, accounts, memoranda, and other  
12 records with respect to any transaction with a public util-  
13 ity or natural gas company that is an associate company  
14 of such holding company as are relevant to costs incurred  
15 by such public utility or natural gas company and nec-  
16 essary or appropriate for the protection of utility cus-  
17 tomers with respect to jurisdictional rates.

18 (c) HOLDING COMPANY SYSTEMS.—The Commission  
19 may examine the books, accounts, memoranda, and other  
20 records of any company in a holding company system, or  
21 any affiliate thereof that provides goods or services to, ob-  
22 tains goods or services from, or engages in any transaction  
23 with a public utility or natural gas company that is an  
24 associate company in such holding company system, as are  
25 relevant to costs incurred by a public utility or natural

1 gas company within such holding company system and  
2 necessary or appropriate for the protection of utility cus-  
3 tomers with respect to jurisdictional rates.

4 (d) CONFIDENTIALITY.—No member, officer, or em-  
5 ployee of the Commission shall divulge any fact or infor-  
6 mation that may come to his or her knowledge during the  
7 course of examination of books, accounts, memoranda, or  
8 other records as provided in this section, except as may  
9 be directed by the Commission, by a committee of Con-  
10 gress, or by a court of competent jurisdiction.

11 **SEC. 515. STATE ACCESS TO BOOKS AND RECORDS.**

12 (a) IN GENERAL.—Upon the written request of a  
13 State commission having jurisdiction to regulate a public  
14 utility company in a holding company system, the holding  
15 company or any associate company or affiliate thereof,  
16 other than such public utility company, wherever located,  
17 that provides goods or services to, obtains goods or serv-  
18 ices from, or engages in any transactions with such public  
19 utility company, shall produce for inspection such books,  
20 accounts, memoranda, and other records that—

21 (1) have been identified in reasonable detail in  
22 a proceeding before the State commission;

23 (2) the State commission deems are relevant to  
24 costs incurred by such public utility company; and

1           (3) are necessary for the effective discharge of  
2           the responsibilities of the State commission with re-  
3           spect to such proceeding.

4           (b) LIMITATION.—Subsection (a) does not apply to  
5           any person that is a holding company solely by reason of  
6           ownership of 1 or more qualifying facilities under section  
7           210 of the Public Utility Regulatory Policies Act of 1978.

8           (c) CONFIDENTIALITY OF INFORMATION.—The pro-  
9           duction of books, accounts, memoranda, and other records  
10          under subsection (a) shall be subject to such terms and  
11          conditions as may be necessary and appropriate to safe-  
12          guard against unwarranted disclosure to the public of any  
13          trade secrets or sensitive commercial information.

14          (d) EFFECT ON STATE LAW.—Nothing in this sec-  
15          tion shall preempt applicable State law concerning the pro-  
16          vision of books, records, or any other information, or in  
17          any way limit the rights of any State to obtain books,  
18          records, or any other information under any other Federal  
19          law, contract, or otherwise.

20          (e) COURT JURISDICTION.—Any United States dis-  
21          trict court located in the State in which the State commis-  
22          sion referred to in subsection (a) is located shall have ju-  
23          risdiction to enforce compliance with this section.

1   **SEC. 516. EXEMPTION AUTHORITY.**

2           (a) RULEMAKING.—Not later than 90 days after the  
3   date of enactment of this Act, the Commission shall pro-  
4   mulgate a final rule to exempt from the requirements of  
5   section 204 any person that is a holding company, solely  
6   with respect to 1 or more of the following:

7           (1) Qualifying facilities under the Public Utility  
8   Regulatory Policies Act of 1978.

9           (2) Exempt wholesale generators.

10          (3) Foreign utility companies.

11          (4) Exempt telecommunications companies.

12          (b) OTHER AUTHORITY.—If, upon application or  
13   upon its own motion, the Commission finds that the books,  
14   records, accounts, memoranda, and other records of any  
15   person are not relevant to the jurisdictional rates of a pub-  
16   lic utility or natural gas company, or if the Commission  
17   finds that any class of transactions is not relevant to the  
18   jurisdictional rates of a public utility or natural gas com-  
19   pany, the Commission shall exempt such person or trans-  
20   action from the requirements of section 204.

21   **SEC. 517. AFFILIATE TRANSACTIONS.**

22          Nothing in this title shall preclude the Commission  
23   or a State commission from exercising its jurisdiction  
24   under otherwise applicable law to determine whether a  
25   public utility company, public utility, or natural gas com-  
26   pany may recover in rates any costs of an activity per-

1 formed by an associate company, or any costs of goods  
2 or services acquired by such public utility company from  
3 an associate company.

4 **SEC. 518. APPLICABILITY.**

5 No provision of this title shall apply to, or be deemed  
6 to include—

7 (1) the United States;

8 (2) a State or any political subdivision of a  
9 State;

10 (3) any foreign governmental authority not op-  
11 erating in the United States;

12 (4) any agency, authority, or instrumentality of  
13 any entity referred to in paragraph (1), (2), or (3);  
14 or

15 (5) any officer, agent, or employee of any entity  
16 referred to in paragraph (1), (2), or (3) acting as  
17 such in the course of his official duty.

18 **SEC. 519. EFFECT ON OTHER REGULATIONS.**

19 Nothing in this title precludes the Commission or a  
20 State commission from exercising its jurisdiction under  
21 otherwise applicable law to protect utility customers from  
22 paying too much for goods and services provided by asso-  
23 ciate companies and from other cross subsidization of as-  
24 sociate companies by regulated public utility companies.

1   **SEC. 520. ENFORCEMENT.**

2           The Commission shall have the same powers as set  
3   forth in sections 306 through 317 of the Federal Power  
4   Act (16 U.S.C. 825d–825p) to enforce the provisions of  
5   this title.

6   **SEC. 521. SAVINGS PROVISIONS.**

7           (a) IN GENERAL.—Nothing in this title prohibits a  
8   person from engaging in or continuing to engage in activi-  
9   ties or transactions in which it is legally engaged or au-  
10  thorized to engage on the effective date of this title.

11          (b) EFFECT ON OTHER COMMISSION AUTHORITY.—  
12  Nothing in this title limits the authority of the Commis-  
13  sion under the Federal Power Act (16 U.S.C. 791a et seq.)  
14  (including section 301 of that Act) or the Natural Gas  
15  Act (15 U.S.C. 717 et seq.) (including section 8 of that  
16  Act).

17   **SEC. 522. IMPLEMENTATION.**

18          Not later than 18 months after the date of enactment  
19  of this title, the Commission shall—

20               (1) promulgate such regulations as may be nec-  
21               essary or appropriate to implement this title (other  
22               than section 205); and

23               (2) submit to the Congress detailed rec-  
24               ommendations on technical and conforming amend-  
25               ments to Federal law necessary to carry out this  
26               title and the amendments made by this title.

1 **SEC. 523. TRANSFER OF RESOURCES.**

2 All books and records that relate primarily to the  
3 functions transferred to the Commission under this title  
4 shall be transferred from the Securities and Exchange  
5 Commission to the Commission.

6 **SEC. 524. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated such funds  
8 as may be necessary to carry out this title.

9 **SEC. 525. CONFORMING AMENDMENT TO THE FEDERAL**  
10 **POWER ACT.**

11 Section 318 of the Federal Power Act (16 U.S.C.  
12 825q) is repealed.

Page 122, strike line 12 and all that follows through  
page 123, line 10.

Page 85, after line 6, insert:

13 **SEC. 543. FAIR COMPETITION STANDARDS FOR AFFILIATE**  
14 **TRANSACTIONS.**

15 (a) IN GENERAL.—A public utility company shall  
16 conduct its unregulated business under a subsidiary com-  
17 pany or affiliate company which is separate from any reg-  
18 ulated public utility company engaged in the generation,  
19 transmission, or distribution of electric power or gas. Such  
20 separate subsidiary company or affiliate—

21 (1) shall maintain books, records, and accounts  
22 in the manner prescribed by the state public utility

1 commission which shall be separate from the books,  
2 records and accounts maintained by the public util-  
3 ity company of which it is an affiliate company and  
4 any other subsidiary or affiliate of such public utility  
5 company, shall maintain proper internal cost-alloca-  
6 tion procedures as prescribed by the state commis-  
7 sion, shall file with the commission a cost allocation  
8 manual for public review, and

9 (2) shall conduct all transactions with the pub-  
10 lic utility company of which it is an affiliate or sub-  
11 sidiary on an arms length basis with any such trans-  
12 actions reduced to writing and available for public  
13 inspection.

14 (b) DEALINGS WITH SUBSIDIARIES OR AFFILI-  
15 ATES.—In its dealing with its subsidiary or affiliate as de-  
16 scribed in subsection (a) a public utility company—

17 (1) may not unfairly discriminate in favor of its  
18 subsidiaries or affiliates, and any other entity in the  
19 provision or procurement of, or access to, goods,  
20 services, facilities, and information, or in the estab-  
21 lishment of standards or referral of customers;

22 (2) may not provide information, including mar-  
23 keting leads, to such company, its subsidiaries or af-  
24 filiates, unless such information is made contem-  
25 poraneously available to other persons on non-dis-



1       criminatory terms and conditions; nor shall any util-  
2       ity provide, transfer, or permit the use of, or access  
3       to, equipment, tangible or intangible assets of the  
4       utility unless such transfer, provision, or other use  
5       of such assets is fully compensated by the sub-  
6       sidiary, associate, or affiliated company and in such  
7       a manner so as to avoid foregoing revenues or cre-  
8       ating an unfair competitive advantage over non-af-  
9       filiated competitors;

10       (3) may not share personnel with its subsidi-  
11       aries or affiliates, nor make temporary personnel as-  
12       signments to, nor intermittent personnel rotations  
13       with, its subsidiaries or affiliates, or otherwise utilize  
14       movement of personnel as a means of sharing infor-  
15       mation or to create a competitive advantage over  
16       non-affiliated competitors provided, that if such re-  
17       strictions are precluded under a collective bargaining  
18       agreement, then the public utility company must be  
19       fully compensated by the subsidiary or affiliate and  
20       in such a manner so as to avoid foregoing revenues  
21       or creating an unfair competitive advantage over  
22       non-affiliated competitors;

23       (4) may not cross-subsidize its subsidiary or af-  
24       filiate operations nor shall it shift any costs of its  
25       affiliated or subsidiary operations to its regulated

1 utility operations other than where specifically per-  
2 mitted by law or by order of the appropriate state  
3 regulatory commission.

4 (c) PROPRIETARY INFORMATION.—In complying with  
5 the requirements of this section, each public utility com-  
6 pany and any subsidiary, affiliate, or associate company  
7 of such public utility company shall have a duty to protect  
8 the confidentiality of proprietary information of competi-  
9 tors and customers. A public utility may not share cus-  
10 tomer proprietary information in aggregate form with its  
11 subsidiaries, affiliates or associate companies unless such  
12 aggregate information is contemporaneously available to  
13 other competitors or persons under non-discriminatory  
14 terms and conditions. Individually identifiable customer  
15 proprietary information and other proprietary information  
16 may be—

17 (1) shared only with the written consent of the  
18 person to which such information relates or from  
19 which it was obtained; or

20 (2) disclosed to appropriate authorities pursuant  
21 to court order.

Page 122, strike line 12 and all that follows down  
through page 123, line 10.